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No. 85-1158

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

LARRY CRAWFORD, *Et Alia,*

Petitioners,

v.

UNITED STEELWORKERS, AFL-CIO, *Et Alia,*

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Virginia

PETITIONERS' REPLY BRIEF

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March 25, 1986

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

REPLY BRIEF 1

The Question Presented Was Incorrectly Decided By The Supreme Court Of Virginia In Light Of The Decisions Of This Court And Warrants Review By This Court 1

CONCLUSION 3

TABLE OF AUTHORITIES

Cases

Page

Austin v. Old Dominion Branch No. 496, National Association of Letter Carriers, 418 U.S. 264, 94 S. Ct. 2770, 41 L.Ed.2d 745 (1974) ..... *passim*

Farmer v. United Brotherhood of Carpenters, Local 25, 430 U.S. 290, 97 S. Ct. 1056, 51 L.Ed.2d 338 (1977) ..... *passim*

Statute

Virginia Code (1950), as amended § 8.01-45 2

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The Question Presented Was Incorrectly Decided By The Supreme Court Of Virginia In Light Of The Decisions Of This Court And Warrants Review By This Court.

This case arises as the result of outrageous, vile and insulting language used in the context of a labor dispute on a continuous basis over a period of seventeen months.

This Court limited the far reaching effect of its decision in *Austin v. Old Dominion Branch No. 496, National Association of Letter Carriers*, 418 U.S. 264, 94 S. Ct. 2770, 41 L.Ed.2d 745 (1974), in *Farmer v. United*

Brotherhood of Carpenters, Local 25, 430 U.S. 290, 97 S. Ct. 1056, 51 L.Ed.2d 338 (1977) when it found that the state had the authority to protect its citizens from conduct "so outrageous that 'no reasonable man in a civilized society should be expected to endure it.'" 430 U.S. at 302, 97 S. Ct. at 1064, 51 L.Ed.2d at 351. The *Farmer* case is directly on point with this case in which Petitioners seek review by this Court but the majority opinion of the Supreme Court of Virginia failed to apply this Court's decision in that case. Here Petitioners were subjected to seventeen months of continuous "frequent public ridicule" and "incessant verbal abuse," conduct found actionable in *Farmer*, *supra*.

The Virginia insulting words statute, § 8.01-45 of the Code of Virginia (1950), as amended, provides a remedy for the use of fighting words, *i.e.* words that would tend toward violence and breach of the peace. In *Farmer*, *supra*, Justice Powell wrote for this Court:

> Nothing in the federal labor statutes protects or immunizes from state action violence or the threat of violence in a labor dispute . . . and thus there is no risk that state damages actions will fetter the exercise of rights protected by the NLRA. On the other hand, our cases consistently have recognized the historic state interest in "such traditionally local matters as public safety and order. . . ." And, as with the defamation actions preserved by *Linn*, state-court actions to redress injuries caused by violence or threats of violence are consistent with effective administration of the federal scheme: Such actions can be adjudicated without regard to the merits of the underlying labor controversy. 430 U.S. at 299-300, 97 S. Ct. at 1063 (citations omitted).

The decision in *Farmer*, *supra*, corrected the apparent and indefensible inadequacies of the majority decision in *Austin*, *supra*, so clearly pointed out by the dissent in that case when Justice Powell said:

> Yet the majority nevertheless holds that the state libel judgments entered below are pre-empted by federal labor law. This conclusion seems to me a needless denigration of the "overriding state interest" in compensating individuals for injury to reputation. Moreover, it leaves these appellees without effective remedy for the wrong done them. Far from representing a powerful economic interest that could fight for itself within the federally created system of individual self-government, these appellees were defenseless individuals. In their "dispute" with the union, appellees found themselves in that state of helpless inequality that first gave social meaning to the labor movement. 418 U.S. at 295-6, 94 S. Ct. at 2787 (footnote omitted).

Thus, it is obvious that the Supreme Court of Virginia failed to understand the decisions of this Court, in reversing the trial court's award of damages in this case. This case should be reversed and returned to the Supreme Court of Virginia in order that it might review all of the questions presented on appeal.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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